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PARENTAL RESPONSIBILITY LAWS: LET THE PUNISHMENT FIT THE CRIME

*When thousands of Ford Pintos began exploding in fiery rear-end crashes back in the 1970s, the victims knew who to hold liable for the deaths and injuries. They went after the manufacturer. But how, as a society, do we assess responsibility when the defective product is a troubled teenager and the "manufacturer" is a parent?*¹

I. INTRODUCTION

While there is no clear consensus about the causes of juvenile delinquency, bad parenting is included somewhere in the list. Criminology theories and empirical studies identify families, economic status, academic achievement, peer groups, community attachment, and susceptibility to the media as factors likely to affect a child's tendency to become delinquent.² So, why recently, especially in the aftermath of the Columbine High School incident and other school shootings, are we as a society so anxious to point blame at parents for the violent acts of their children? While there is evidence connecting "bad" parents to their children's delinquent behavior, clearly parents are not the *only* cause.³ We are not even sure that they are the *primary* cause. Yet, in the past three years, at least fifteen states have enacted or amended civil and criminal parental responsibility laws.⁴ The federal government is considering a bill with a provision to make parents criminally responsible for providing children access to guns.⁵ Starting in 1998, the National Conference of State

1. Julie DelCour, *When Are Parents to Blame?*, TULSA WORLD, May 2, 1999, available in LEXIS, Nexis Library, News File.

2. See Tami Scarola, Note, *Creating Problems Rather Than Solving Them: Why Criminal Parental Responsibility Laws Do Not Fit Within Our Understanding of Justice*, 66 FORDHAM L. REV. 1029, 1065 (1997).

3. See *id.* at 1057.

4. See *infra* note 29 and accompanying text.

5. See *infra* Part V.

Legislatures made “restorative” or balanced juvenile justice a primary focus, advocating holding both juveniles and their parents accountable for delinquent acts.⁶

So, why the legislative finger-pointing at parents? According to a Los Angeles attorney, this is “a statement that society is trying to send through its legislators which is [that] they want parents to take control of their children in order to protect society.”⁷ Congressman Henry Hyde seems to have summed up the public response to what he calls a “coarsening of American life” witnessed through its youth: “These tragic school shootings in recent months have fostered a national climate where we’re all looking for answers.”⁸ Part of the answer seems to be asking parents to properly police their children.

This Comment looks at whether parental responsibility laws are indeed part of the solution to the juvenile crime problem. Part II focuses on the need for parental responsibility laws. Despite the decline in the past few years of juvenile crime rates, sharp increases in juvenile crime from the mid-1980s through the mid-1990s, plus a present rate that is much higher than desired, foster reason to be concerned. Also, public fear and attention to the impact of delinquency on society certainly have not declined, and legislatures are reacting with parental responsibility laws.

Part III looks at the history of parental responsibility laws, both civil and criminal. While such statutes may not be a new concept, enforcement of the statutes would be. This section discusses the goals of parental responsibility laws, pointing out problem areas needing resolution before these statutes can be truly effective.

Parts IV and V consider the public and legislative responses to high-profile juvenile crimes such as the Columbine tragedy. While

6. See ADELIA YEE, NATIONAL CONFERENCE OF STATE LEGISLATURES, STATE LEGISLATIVE REPORTS: JUVENILE CRIME AND JUSTICE STATE LAWS IN 1997 (1998), available in LEXIS, Nexis Library, States Legal-U.S. File [hereinafter NCSL I].

7. *CNN Crossfire: Should Parents Be Held Accountable for the Criminal Acts of Their Children?* (CNN television broadcast, Apr. 28, 1999) [hereinafter *CNN Crossfire*] (unpublished transcript, on file with Federal Document Clearing House) (quoting Gloria Allred).

8. U.S. Representative Henry Hyde, Remarks at the Meeting Chaired by Senator Orrin Hatch on Juvenile Justice Legislation (Aug. 5, 1999) (transcript available through Federal Document Clearing House Political Transcripts).

the parental responsibility provision in the Youth Gun Crime Enforcement Act of 1999⁹ seems an appropriate and necessary response, it must be properly applied and enforced. This is an area in which other parental responsibility legislation has failed.

Finally, Part VI provides recommendations for parental responsibility legislation so that it may more adequately achieve the result of reducing juvenile delinquency through the parent. This author suggests applying a "sliding scale" approach to parental offenders: the more serious the crime, the more serious the punishment. Clearly criminal parental responsibility statutes cannot succeed in a vacuum. Therefore, implementing and applying social programs to deal with less serious offenders would increase the effectiveness of criminal sanctions. Parental responsibility laws may then become an effective part of the answer for which society is looking.

II. THE NEED FOR PARENTAL RESPONSIBILITY LEGISLATION

Parental responsibility laws are largely a product of the 1990s. Experts say that the recent introduction of such laws, holding parents criminally and civilly liable for the delinquent acts of their children, is the result of a seventy-five percent increase in juvenile crime from the mid-1980s to the mid-1990s.¹⁰ The juvenile crime rate did, in fact, peak in 1993 and has been steadily declining from 1993 to the present.¹¹ However, even with this decline, the present juvenile

9. Youth Gun Crime Enforcement Act of 1999, S. 995, 106th Cong. § 204; Youth Gun Crime Enforcement Act of 1999, H.R. 1768, 106th Cong. § 204. See Appendix for full text of the bill.

10. See Joyce Howard Price, *Killers' Parents Denied Immunity as Liability Trend Grows in U.S.*, WASH. TIMES, May 2, 1999, at C7; see also FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1995, at 212 (1996) [hereinafter UCR 1995] (citing a 67.3% increase in juvenile violent crime between 1986 and 1995, but only a 31.4% increase in adult violent crime during that same period).

11. See Adam Spector, *Indicators of Youth Violent Crime and Victimization Show Continuing Declines* (last modified July 8, 1999) <<http://www.childstats.gov/ac1999/teenrel.asp>> (indicating that the 1997 juvenile violent crime rate of 31 crimes per 1000 youth in the general population dropped from a high of 52 crimes per 1000 youth in 1993 and is the lowest rate since 1986). In fact, the overall violent crime rate has also been dropping. See FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1997, at 12-13 (1998). The lowest national crime rate since 1987 of 611 violent crimes per 100,000 inhabitants

crime rate is still well above the mid-1980s level,¹² and the overall crime rate is still particularly high among youths.¹³

According to the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), “[s]uch good news [about the recent decline in juvenile crime] . . . should not foster complacency nor lead us to weaken our efforts to combat violent juvenile crime, which despite decreases is still too prevalent.”¹⁴ Of particular concern is that juvenile violence has become more lethal, illustrated by the doubling of the juvenile arrest rate for murder and weapons violations between 1987 and 1993.¹⁵ While, again, there has been a steady decline since 1993 in firearm-related crimes, the present rate is still twice as high as the 1984 rate.¹⁶ Finally, America’s violent crime rate, despite recent declines, is still much higher than other countries. For example, in Japan fifteen people were killed in

was reported in 1997. *See id.* at 12. As compared to the violent crime rates in 1993, there was a 4.4% drop in 1994, an 8.3% drop in 1995, a 14.8% drop in 1996, and an 18.2% drop in 1997. *See id.* at 13 chart 2.5.

12. In 1997, the rate of juvenile homicides was the lowest in the decade, but was still 21% above the average of the 1980s. *See* HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 53 graph (1999) [hereinafter 1999 NATIONAL REPORT]. For example, while the number of known murder offenders, age 17, was approximately 400 in 1984, there were still approximately 800 known offenders in 1997, even after a steady decline since a peak in 1994. *See id.*

13. *See* NATIONAL CONFERENCE OF STATE LEGISLATURES, STATE LEGISLATIVE REPORTS: A LEGISLATOR’S GUIDE TO COMPREHENSIVE JUVENILE JUSTICE (1998), available in LEXIS, Nexis Library, States Legal-U.S. File [hereinafter NCSL II] (reporting that while only 11% of the U.S. population was aged 10 to 17 in 1994, children under age 18 accounted for 19% of violent crime arrests).

14. Howard N. Snyder, *Juvenile Arrests 1998*, OJJDP JUV. JUST. BULL. (Office of Juvenile Justice and Delinquency Prevention, Wash., D.C.), Dec. 1999, at 1.

15. *See* Heike P. Gramckow & Elena Tompkins, *Enabling Prosecutors to Address Drug, Gang, and Youth Violence*, JAIBG BULL. (Office of Juvenile Justice and Delinquency Prevention, Wash., D.C.), Dec. 1999, at 2; *see also* 1999 NATIONAL REPORT, *supra* note 12, at 54 (noting that while between 1980 and 1987, firearms were used in just over one-half of all homicides involving a juvenile offender, by 1994, 82% of such homicides involved the use of a firearm).

16. *See* 1999 NATIONAL REPORT, *supra* note 12, at 54 graph.

1996 with a handgun; in England, it was thirty; in the United States, it was 9390.¹⁷

Importantly, public attitudes and fear of juvenile crime have not steadily declined along with the youth crime rate. Concern for juvenile violent crime continues to reflect the rise in juvenile crime from the mid-1980s through 1993.¹⁸ The public may have reason to be concerned. Consider the following statistics. Fewer than one-half of serious violent crimes by juveniles are, in fact, reported to law enforcement and, therefore, reflected in the above-cited statistics.¹⁹ Even still, violent crimes committed by juveniles comprise one in four of all violent crimes.²⁰ It is estimated that by the year 2005, the number of teens, ages fourteen to seventeen, who commit the majority of violent crimes, will be twenty percent above the 1994 level.²¹

Statistics concerning family conditions arguably also give rise to concern. In 1998, only sixty-eight percent of American children lived with two parents; both parents were employed full-time in thirty-one percent of those homes, increasing from seventeen percent

17. See Carter Harris, *Bill Bradley: He Has a Dream*, VIBE, Mar. 2000, at 127, 128; see also Alan Travis, *London Near Bottom of International Murder League*, GUARDIAN (LONDON), Aug. 19, 1998, at 7 (noting that Washington, D.C., has a murder rate thirty-three times higher than London, while New York City has a murder rate eight times higher than London).

18. For example, in a Gallup Poll survey conducted in May 1999, when asked what is the most important problem facing America, 17% of those polled said crime and violence, while another 18% said ethics, morals, and family decline. These were the two highest-ranking responses, outnumbering education, drugs, and poverty. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1998, at 96 (Kathleen Maguire & Ann L. Pastore eds., 1999)

19. See 1999 NATIONAL REPORT, *supra* note 12, at 53, 63 (stating that in 1997 the FBI had no information on the offender for about 6900 reported murders, therefore, estimating that the 1400 reported murders attributable to juveniles is likely greater). In 1997, law enforcement agencies learned about only 51% of sexual assaults, 40% of robberies, and 42% of aggravated assaults committed by juveniles. See *id.* at 63.

20. See Spector, *supra* note 11.

21. See Gramckow & Tompkins, *supra* note 15, at 2; see also Eric Lichtblau, *Juvenile Arrests in U.S. Decline, Belying Fears*, L.A. TIMES, Oct. 18, 1999, at A1 ("Federal estimates project that California will have the biggest growth rate in the nation in its juvenile population, with a 34% increase by the year 2015.").

in 1980.²² Also, children living with employed, single mothers rose to forty-one percent in 1997.²³ These statistics are important since the number of parents living with a child is usually correlative to the amount and quality of human and economic resources available to that child.²⁴ Family conditions with respect to divorce and family cohesiveness are listed by the FBI as factors “known to affect the volume and type of [juvenile] crime occurring from place to place.”²⁵

As illustrated by these statistics, public attention to the problems of juvenile violence may be appropriately placed. This may be a necessary reaction to what is a prevalent problem, despite the *recent* decline in the number of reported juvenile offenders. Undoubtedly, perceptions of juvenile offenders have been influenced by the attention focused on high-profile incidents, such as the recent wave of school shootings.²⁶ Yet, while the public’s perceptions about juvenile crime may be partially based upon such rare, high-profile incidents, the reactions to this attention are arguably desirable to combat any future increases in juvenile crime rates overall.²⁷

As a result, according to the National Conference of State Legislatures (NCSL), “[p]ublic fear of crime and concern that juveniles are disproportionately responsible for violent crime in this country have put juvenile justice reform high on state legislative agendas.”²⁸

22. See FEDERAL INTERAGENCY FORUM ON CHILD AND FAMILY STATISTICS, AMERICA’S CHILDREN: KEY NATIONAL INDICATORS OF WELL-BEING 7, 14 (1999).

23. See *id.* at 14.

24. See *id.* at 7; see also Naomi R. Cahn, *Pragmatic Questions About Parental Liability Statutes*, 1996 WIS. L. REV. 399, 424 (“[H]aving at least two parental figures . . . correlates with a decrease in delinquent behavior.”).

25. UCR 1995, *supra* note 10, at vi.

26. To support this statement, all one needs to do is look at the media attention surrounding the Columbine tragedy and its aftermath. See Interview with Katie Couric of the National Broadcasting Corporation, 35 WEEKLY COMP. PRES. DOC. 763 (May 3, 1999), where the President, in an April 29, 1999, interview, called for a “national campaign” to attack the youth problem only a few weeks after the incident. See also Lichtblau, *supra* note 21, at A1 (“You have a horrific incident like the Columbine shootings, and that paints a picture of a continuing problem that has not gone away. But people are shocked when you try to tell them that juvenile crime is actually going down.”) (quoting Shay Bilchik, head of the U.S. Justice Department’s Office of Juvenile Justice and Delinquency Prevention).

27. See NCSL II, *supra* note 13.

28. *Id.*

Clearly, one proposed answer to the problem has been to point the finger at the parents of these lawless children. Thus, in 1997 and 1998, at least fifteen states passed or amended existing civil and criminal parental responsibility laws making parents accountable for their children's criminal actions.²⁹ If, in fact, the rates of juvenile crime continue, crime researchers warn that population increases could translate to the number of juvenile arrests more than doubling by 2010. Arguably, the recent surge in legislative response would then continue.³⁰ Thus, while some say the outlook for the next ten years is heightened juvenile crime,³¹ while others refute such a prediction, the "trend" of looking to punish parents of youth offenders in the fight against juvenile crime is likely to persist so long as public concern persists.

III. HISTORY OF PARENTAL RESPONSIBILITY LAWS

Holding parents responsible for juvenile delinquency is not a new concept in state legislatures. Historically, parental liability for the acts of minors has included both civil and criminal liability.³² However, while all fifty states have statutes imposing some type of vicarious tort liability on parents for damages resulting from acts of

29. See Price, *supra* note 10, at C7. Some of the state legislation includes: CAL. WELF. & INST. CODE § 664 (West 1999) (requiring parents to attend all court hearings for their child or face charges of contempt); FLA. STAT. ch. 985.203 (Supp. 2000) (making parents liable for legal fees and costs of criminal prosecution of their child); GA. CODE ANN. § 51-2-3 (1999) (increasing the amount to \$10,000 for which a parent may be liable as a result of a child's willful or malicious acts); IDAHO CODE § 32-1301 (1999) (allowing cities to enact and enforce parental responsibility ordinances for the offense of failure to supervise a child, with misdemeanor penalties).

30. See NCSL II, *supra* note 13. *But cf.* 1999 NATIONAL REPORT, *supra* note 12, at 134 ("As Attorney General Janet Reno has often said, demography is not destiny. . . . Current and future social and policy changes will have more effect on juvenile violent crime and arrest trends than will population changes.").

31. See NCSL II, *supra* note 13 ("Demographics suggest that a swell of children now under age 10—many of whom a prominent Princeton professor [John J. DiIulio] recently referred to as 'fatherless, godless and jobless'—could create yet another wave of lawlessness."); see also Gramckow & Tompkins, *supra* note 15, at 1-2 ("[Heightened public] concerns were fueled by a few criminologists who predicted a coming generation of 'superpredators' based on the decade-long growth in serious and violent juvenile crime arrests . . .").

32. See discussion *infra* Part III.A-B.

their children,³³ lawmakers are now focusing attention on harsher criminal sanctions for parents.³⁴ In order to analyze this shift in the direction of heightened criminal liability, this Part first examines past attempts at parental responsibility.

A. Civil Liability

In 1846, Hawaii passed the first statute allowing victims to recover from the parents of the child who harmed them.³⁵ While the common law did not allow recovery absent the showing of a parent's act or omission causing damage, state statutes generally imposed civil liability based solely on the parent-child relationship. This was regardless of an intentional or negligent act or omission by the parent.³⁶ However, state statutes generally did address the necessary

33. See Christine T. Greenwood, Note, *Holding Parents Criminally Responsible for the Delinquent Acts of Their Children: Reasoned Response or "Knee-Jerk Reaction"?*, 23 J. CONTEMP. L. 401, 401 (1997).

34. See Courtney L. Zolman, Comment, *Parental Responsibility Acts: Medicine for Ailing Families and Hope for the Future*, 27 CAP. U. L. REV. 217, 226 (1998).

35. See 1859 Haw. Sess. Laws. 1288 (codified as amended at HAW. REV. STAT. § 577-3 (1999)). Hawaii's statute was unusual since, unlike other state statutes that followed, it did not cap the potential recovery by victims of juvenile crime. See Jason Emilios Dimitris, Comment, *Parental Responsibility Statutes—And the Programs that Must Accompany Them*, 27 STETSON L. REV. 655, 662 (1997). All state statutes, except Hawaii, now place monetary restrictions on recovery by victims, although these limits have been increased in recent amendments. See *Corley v. Lewless*, 182 S.E.2d 766 (Ga. 1971) (holding that Georgia's vicarious liability statute was unconstitutional since it did not limit the amount of recovery against a parent).

36. See Linda A. Chapin, *Out of Control? The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the United States*, 37 SANTA CLARA L. REV. 621, 628-32 (1997). The author noted that while the common law held "no general responsibility for the rearing of incorrigible children . . . [this] limited common law liability . . . has been extended by statute" in all but one state. *Id.* at 631. An example is Alaska's statute, amended in 1995 to increase the maximum parental liability from \$2000 to \$10,000:

A person . . . may recover damages in a civil action in an amount not to exceed \$10,000 . . . from either parent, both parents, or the legal guardian of an unemancipated minor under the age of 18 years who, as a result of a knowing or intentional act, destroys real or personal property belonging to the person

ALASKA STAT. § 34.50.020(a) (Michie 1999).

state of mind of the child.³⁷ More than mere negligence, the child must have been “willful,” “malicious,” “delinquent,” “intentional,” or “reckless” in causing a criminal act, depending on the requirements of the state statute.³⁸

1. Goals of civil liability statutes

Why were civil parental liability statutes historically adopted? Authors and case law suggest that the majority of such state statutes were enacted in response to an increase in juvenile delinquency from 1951 through the 1960s.³⁹ During that period, many individuals came to question the ability of the juvenile court system—trying to act as *parens patriae*—to rehabilitate delinquent youth.⁴⁰ “The treatment techniques available to juvenile justice professionals never reached the desired levels of effectiveness.”⁴¹

For this reason, states began to focus on parents as the cause of juvenile delinquency. Thus, the goal for adopting parental liability laws was to punish, or at least threaten to punish, parents for the acts of their children, rationalizing that parents would then exercise control over their children.⁴² Accordingly, it was presumed that “the threat of civil damages [would] encourage parents to better supervise their children, and that better supervision of children [would] reduce juvenile tortious [and criminal] acts.”⁴³ Therefore, while parental civil liability laws, like many tort laws, may also have been adopted for the clear purpose of compensating the victim, the primary goal was to reduce juvenile delinquency.⁴⁴

37. See Chapin, *supra* note 36, at 632.

38. See *id.*

39. See *id.* at 631.

40. See generally *Juvenile Justice: A Century of Change*, 1999 NAT'L REP. SERIES, JUV. JUST. BULL. (Office of Juvenile Justice and Delinquency Prevention, Wash., D.C.), Dec. 1999, at 2-5 (describing the transformation of the juvenile justice system from its founding, where the focus was on rehabilitation, through the 1990s, where the focus was, and continues to be, on “cracking down” on juvenile crime).

41. *Id.* at 3.

42. See Chapin, *supra* note 36, at 633.

43. *Id.* at 633; see also *General Ins. Co. of Am. v. Faulkner*, 130 S.E.2d 645, 650 (N.C. 1963) (discussing this rationale behind adoption of North Carolina's and other states' vicarious parental liability statutes).

44. See, e.g., GA. CODE ANN. § 51-2-3(c) (1999) (stating that the statute's

2. Effectiveness of civil liability statutes

Despite the adoption of parental civil liability statutes to control juvenile delinquency, there is, at present, inadequate evidence to ascertain whether this has in fact resulted.⁴⁵ It would seem that the rise in juvenile crime rates since the enactment of these statutes would prove the statutes to be ineffective. However, there are currently no reliable studies to support this presumption.⁴⁶

Opponents argue that the possible inadequacies of such civil responsibility statutes derive, first, from the courts' fleeting focus on imposing a money judgment, rather than a focus on deterring delinquency through responsible parenting.⁴⁷ Some parents will not be influenced by a money judgment since they have inadequate resources to compensate a victim.⁴⁸ For others, money may not be an issue, and they will "think nothing of paying the fine," especially since the amounts now statutorily enforceable are fairly small.⁴⁹ In either situation, once judgment is entered, the court has no further influence over that parent. "Further motivation for reform must come from within the parent, which is an unlikely outcome due to the fact that some deficiency of the parent is most often what landed the parent in court in the first place."⁵⁰ Therefore, even if a victim is compensated for the injury, a money judgment leaves unaddressed the juvenile's delinquent behavior and the parent's failure to prevent such behavior.⁵¹

purpose "is to provide for the public welfare and aid in the control of juvenile delinquency, not to provide restorative compensation to victims"); *see also* Chapin, *supra* note 36, at 632 (noting that the primary legislative intent of parental civil liability laws is not to compensate the victims). If, in fact, this were the main goal, "there would be no reason to statutorily restrict the recovery" as almost all state laws presently do. *Id.*

45. *See id.* at 637.

46. While one study addressing this question suggested that civil parental liability statutes do not result in a reduction in juvenile delinquency, this study has been criticized as flawed in structure and analysis. *See id.*

47. *See* Zolman, *supra* note 34, at 232-33.

48. *See id.* at 232.

49. *Id.*

50. *Id.* at 233.

51. *See id.* (stating the author's preference for criminal liability statutes since civil liability greatly restricts the court by preventing it from taking any solution-oriented action).

Second, critics argue that due to their restrictions, civil statutes actually do not fulfill the secondary goal of compensating the victim.⁵² As of 1991, about half of all state statutes failed to cover damages due to personal injury, covering only property damages.⁵³ The average maximum recovery amount in 1991 was only \$2500 or less, “hardly enough to cover medical expenses and out-of-pocket losses related to the infliction of serious personal injuries.”⁵⁴ In addition, as stated by Judge Sophia Hall of the Juvenile Justice Section of Cook County in Chicago, “We’re talking about dysfunctional families, frequently; and for the majority of folks coming through juvenile court, money is the issue in the first place.”⁵⁵ Therefore, while the fines are often too small to fully compensate victims, they are also too large for a low-income family who must now subtract those funds from family necessities.⁵⁶

Proponents of civil parental responsibility statutes suggest maximizing liability amounts to help provide increased deterrence to parents to better supervise their children.⁵⁷ While the amounts instituted at present may not have such an effect, increased liability could scare parents into taking action. On the other hand, as stated above, increased liability may only result in more hardship for the low-income families that are often the defendants in such lawsuits.

B. Criminal Liability

To adhere to criminal law principles and constitutional requirements, criminal sanctions cannot be imposed on a parent through a

52. See Howard Davidson, *No Consequences—Re-Examining Parental Responsibility Laws*, 7 STAN. L. & POL’Y REV. 23, 26 (1995-96).

53. See *id.*

54. *Id.*

55. Mary Wisniewski Holden, *Increasing Message to Parents of Juvenile Offenders: You’re Grounded*, CHI. LAW., Dec. 1996, at 14.

56. See Kathryn J. Parsley, Note, *Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of Their Children*, 44 VAND. L. REV. 441, 469 (1991) (stating that fines under these statutes are “too small to effect a change in the behavior of parents,” instead reducing the minimal resources the parents have to provide to their families).

57. Gloria Allred, a Los Angeles trial attorney, suggests that making the ceiling even higher would provide “a real incentive for parents so that they think, ‘Gee, I could be sued for \$500,000 or \$1 million dollars.’” *CNN Cross-fire*, *supra* note 7.

theory of vicarious liability.⁵⁸ Therefore, unlike civil parental liability, criminal liability is not invoked based solely upon the parent-child status. In order to be categorized as criminal conduct, the following generally must be implicated: (1) actus reus, an act or omission; (2) mens rea; (3) causation; and (4) harm.⁵⁹ Statutory criminal liability is thus imposed upon a parent where "the *parent* is proved to have had the requisite criminal intent and to have 'caused' the child's delinquent act. . . . [T]he connection between the parent's poor parenting and the child's delinquent act must be established . . . unlike [under] the vicarious tort liability statutes."⁶⁰ This translates to criminal liability for parents only for *their own actions or omissions*, and not for the delinquent acts of their child based solely on being the parent of that child.⁶¹ Neither courts nor legislatures have said that parents should be held criminally liable simply because they are parents.

Criminal parental responsibility laws must also withstand constitutional due process, vagueness, and overbreadth challenges, arguments often raised by opponents of such laws. Without proof of mens rea (generally established by actual or constructive knowledge of the child's behavior) and causation (the ability to control the child's behavior), criminal sanctions would likely not pass constitutional muster.⁶² However, if legislators draft criminal parental

58. See Chapin, *supra* note 36, at 637.

59. See JOHN KAPLAN ET AL., CRIMINAL LAW: CASES AND MATERIALS 119-20 (1996).

60. Chapin, *supra* note 36, at 638.

61. See *State v. Akers*, 400 A.2d 38, 39-40 (N.H. 1979) (striking down a parental responsibility statute because it criminalized the status of parenthood by failing to specify an act or omission by the parent that would impose criminal liability); see also Zolman, *supra* note 34, at 241 ("Parents are not, as some opponents believe, at fault simply as a result of their status in relation to the child.").

62. For example, one municipal ordinance on parental responsibility was struck down by a court for violating parents' rights to due process of law because its language presumed that children's misconduct resulted from parents' active or passive wrongdoing. See *Doe v. City of Trenton*, 362 A.2d 1200 (N.J. Super. Ct. App. Div. 1976) (holding the Trenton ordinance unconstitutional since the prosecution did not have to prove the parents' mens rea or the causation element usually required for a criminal conviction), *aff'd per curiam*, 380 A.2d 703 (N.J. 1977); see also *CNN Crossfire*, *supra* note 7 (statement by president of the ACLU, Nadine Strossen: "Our criminal law is appropriately

liability statutes and ordinances with “a sufficient degree of specificity,” or if courts “import tort and/or criminal standards to provide the laws with substantive content,” these statutes should withstand constitutional challenges grounded in vagueness.⁶³ Also, if legislators carefully draft these laws to define the acts and omissions that constitute violations of the provisions, the prosecution can avoid overbreadth challenges.⁶⁴

The most common criminal liability statutes involve penalties for “contributing to the delinquency of a minor” (CDM) or “endangering the welfare” of a child. Colorado was the first state to enact such a law in 1903.⁶⁵ All but two states followed by 1961.⁶⁶ Such statutes punish anyone, including parents, who “cause” or “contribute” to a child’s commission of an unlawful act.⁶⁷ These laws, similar to parental abuse or neglect statutes, punish the adult for either

demanding. Before somebody can be prosecuted and deprived of liberty, he or she has to have a specific intent, specific knowledge to participate in the crime It would be tragic to treat as criminals parents who nearly [sic] were negligent or not perfect parents.”).

63. Greenwood, *supra* note 33, at 425. In general, a constitutional discussion is beyond the scope of this Comment. For a more complete discussion of the constitutionality of parental responsibility legislation, see Parsley, *supra* note 56, and Toni Weinstein, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859 (1991).

64. See Greenwood, *supra* note 33, at 426.

65. 1903 Colo. Sess. Laws (codified as amended at COLO. REV. STAT. § 18-6-701 (1999)) (applying to “[a]ny person who induces, aids, or encourages a child to violate any federal or state law, municipal or county ordinance, or court order”).

66. See Chapin, *supra* note 36, at 648.

67. An example is Alabama’s CDM statute, ALA. CODE § 12-15-13(a) (1999), which states:

It shall be unlawful for any parent, guardian or other person to willfully aid, encourage or cause any child to become or remain delinquent, dependent or in need of supervision or by words, acts, threats, commands or persuasions, to induce or endeavor to induce, aid or encourage any child to do or perform any act or to follow any course of conduct which would cause or manifestly tend to cause such child to become or remain delinquent, dependent or in need of supervision or by the neglect of any lawful duty or in any other manner contribute to the delinquency, dependency or need of supervision of a child.

Id.

affirmative conduct or specified omissions.⁶⁸ An adult, for example, can be punished for *actively enticing* a minor into stealing or using alcohol.⁶⁹ On the other hand, an adult can also be punished for *failure* to have a child attend school.⁷⁰ While typically negligence crimes, some statutes require a higher level of mens rea for certain elements of the crime.⁷¹ In the few cases where parents, as opposed to other unrelated adults, have been prosecuted under CDM statutes, the courts have rarely addressed the significance of the relationship between parenting and the child's delinquent act.⁷²

Despite the prevalence of CDM statutes, parental responsibility laws arose in order to focus more on the relationship between parenting and a child's delinquency.⁷³ By 1997, about seventeen states and numerous municipalities enacted these more specific "parental responsibility" statutes.⁷⁴ Such laws focus on the *parents'* liability for their children's criminal acts, often through the separate offense of failure to supervise a child or improper supervision—in essence, violations of parental duties.⁷⁵ Thus, parental responsibility laws

68. See S. Randall Humm, Comment, *Criminalizing Poor Parenting Skills as a Means to Contain Violence By and Against Children*, 139 U. PA. L. REV. 1123, 1144 (1991).

69. See N.J. STAT. ANN. § 33:1-81.1a (West Supp. 1999).

70. See ALA. CODE § 12-15-13(a).

71. See Paul W. Schmidt, Note, *Dangerous Children and the Regulated Family: The Shifting Focus of Parental Responsibility Laws*, 73 N.Y.U. L. REV. 667, 676-77 (1998); see also, e.g., N.H. REV. STAT. ANN. § 639:3 (1999) (providing that "[a] person is guilty of endangering the welfare of a child . . . if he *knowingly* endangers the welfare . . . by *purposely* violating a duty of care") (emphasis added).

72. See Chapin, *supra* note 36, at 648.

73. This is not to suggest that clauses instituting parental responsibility are new. For example, parental liability clauses have been included in local curfew ordinances since the 1950s. The difference, however, is that what are now being referred to as "parental responsibility laws" are much broader, imposing criminal liability against the parent for a wide range of acts by the child. See *id.* at 651.

74. See Greenwood, *supra* note 33, at 416. Examples of recently enacted state parental responsibility statutes include: CAL. PENAL CODE § 272 (West 1999); IDAHO CODE § 32-1301 (1999); N.J. STAT. ANN. § 33:1-81.1a (West Supp. 1999); N.Y. PENAL LAW § 260.10 (McKinney 1999); OKLA. STAT. ANN. tit. 21, § 858.2 (West Supp. 2000); OR. REV. STAT. § 163.577 (Supp. 1998); WYO. STAT. ANN. § 14-6-244 (Michie 1999).

75. See Greenwood, *supra* note 33, at 416.

generally punish passive, rather than active, conduct by the parent.⁷⁶ Unlike CDM statutes, parental responsibility laws often (1) lessen the mens rea needed to establish guilt,⁷⁷ or (2) specify which juvenile acts indicate violations of parenting under the statute.⁷⁸ There is a trend in recent parental responsibility laws to combine both specificity of action and lessening of mens rea requirements.⁷⁹ This would seem to reflect a “heightened willingness to define proper parenting and to hold parents liable for deviations from this definition.”⁸⁰

1. Goals of criminal liability statutes

The primary purpose of criminal parental responsibility laws, similar to civil liability statutes, is to decrease juvenile delinquency through deterrence. The theory, again, is that “if parents are punished, or threatened with punishment, they will become ‘good’ parents to avoid such punishment,” thereby reducing juvenile crime.⁸¹

76. According to one author, “a duty to act can be created with liability resulting from nonperformance The state imposes an affirmative duty on the parent to provide guidance, which if ignored leads to criminal sanctions.” Humm, *supra* note 68, at 1145.

77. See Schmidt, *supra* note 71, at 679. For example, OR. REV. STAT. § 163.577 imposes *strict liability* for:

Failing to supervise a child.

(1) A person commits the offense of failing to supervise a child if the person is the parent . . . charged with the care or custody of a child under 15 years of age and the child:

(a) Commits an act that brings the child within the jurisdiction of the juvenile court

Id.

78. See Schmidt, *supra* note 71, at 678-79. For example, Louisiana’s statute makes parents criminally liable if a child is convicted of a felony; is a member of a known criminal street gang; possesses or has access to an illegal firearm, weapon, or explosive; is a known user or distributor of illegal drugs; or is habitually truant. See LA. REV. STAT. ANN. § 14:92.2 (West Supp. 2000). Criminal sanctions include penalties of between \$25 and \$250 per offense, imprisonment for up to 30 days, or both. See *id.* The mens rea is set at criminal negligence, defined by the Louisiana legislature as a “gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.” *Id.* § 14:12. Several states have also enacted laws dealing specifically with guns, punishing parents whose children illegally possess or use firearms. See discussion *infra* Part V.

79. See Schmidt, *supra* note 71, at 681-82.

80. *Id.* at 682.

81. Chapin, *supra* note 36, at 650.

Since convictions under such statutes are rare, some commentators have suggested that parental responsibility laws are on the books primarily for this *threat* of punishment, to encourage parents to control their children, rather than as a source of true punishment.⁸²

2. Effectiveness of criminal liability statutes

The lingering question is whether criminal parental liability can or will reduce juvenile delinquency by punishing or threatening to punish the parent. At the present time, states do not have evidence of the effectiveness of existing criminal liability legislation.⁸³ In fact, "there is no study which has been discovered which has even attempted the . . . task of assessing whether such criminal statutes do, in fact, result in a change in the parent's behavior which in turn results in a reduction in delinquent acts by his or her child."⁸⁴ There is only anecdotal evidence to rely upon to show that "parental responsibility policies or ordinances have the positive deterrent effect of encouraging parents to exercise more responsible control over wayward children before they begin to engage in delinquent conduct."⁸⁵

The effectiveness of existing laws is unknown, in large part, because of a lack of actual enforcement of parental liability through the legal system.⁸⁶ In theory, it would certainly seem that deterrence would only work if, in fact, there was a true threat that the law would actually be enforced.⁸⁷ One author suggests that CDM statutes are generally not enforced because the actions are classified as misdemeanors, thereby "diminishing police and prosecutor interest in pursuing actions under them."⁸⁸ He recommends that before dismissing

82. *See id.* at 653.

83. *See id.* at 654.

84. *Id.*

85. Davidson, *supra* note 52, at 27.

86. *See id.* at 25-26.

87. According to one author, low prosecution rates indicate the failure of criminal parental liability laws because this diminishes fear and thus diminishes the law's deterrent effects on parents. *See* Michelle L. Casgrain, Note, *Parental Responsibility Laws: Cure for Crime or Exercise in Futility?*, 37 WAYNE L. REV. 161, 171-72 (1990).

88. Davidson, *supra* note 52, at 25. He also suggests that CDM statutes are not enforced because of concern over their constitutionality. *See id.* However, he recognizes that most of these statutes focus on specific behavior, "sidestepping such constitutional concerns as due process infringements, 'void for

CDM statutes as ineffective and unfair, research should be done to study recent amendments upgrading violations to felonies.⁸⁹ “Only by comparing the use of . . . CDM laws before the change as contrasted with after the change will states know if the new legislative initiatives are accomplishing their intended purposes.”⁹⁰ Similarly, parental responsibility laws, like CDM statutes, possibly are not enforced by prosecutors at the present time because of the minor penalties imposed.⁹¹ If this is true, amendments imposing harsher penalties may result in some increase in prosecutions, thereby permitting such a study in the future on the effectiveness of stricter laws on the ultimate goal of reducing juvenile crime.⁹²

Another reason for the lack of enforcement is the difficulty in proving the mens rea required in many statutes.⁹³ The low utilization of criminal parental liability laws “may be attributable to the difficulty inherent in proving parental knowledge in states which require some act or omission of the parent,” rather than to law enforcement’s failure to bring charges.⁹⁴ Critics also argue that for some criminal laws, the necessary mens rea is often too vague to enforce.⁹⁵ One commentator suggests that the key to a successful parental responsibility statute is its clarity, since only then can courts effectively determine if a parent falls within the standard of the law.⁹⁶ Similarly, causation issues arise since in many circumstances the prosecution cannot state with certainty whether a parent’s failure to control his or her child actually caused the juvenile delinquency at hand.⁹⁷

vagueness,’ and status crimes.” *Id.*

89. *See id.*

90. *Id.*

91. *See, e.g.,* CAL. PENAL CODE § 272 (West 1999) (enforcing crime as misdemeanor).

92. *See* discussion *infra* Part V for examples of such statutes.

93. *See* Scarola, *supra* note 2, at 1046 n.167. Implicit in this lack of enforcement is the fact that the effectiveness of parental responsibility laws simply has not been tested.

94. *Id.*

95. *See* discussion *infra* Part III.C, concerning California’s Penal Code section 272, where opponents of the law made this argument.

96. *See* Greenwood, *supra* note 33, at 424-25.

97. *See supra* Part I for discussion of the many identified causes attributable to juvenile delinquency, thereby making it difficult to say bad parenting was the cause. *See also Doe v. City of Trenton*, where the court reiterated that research and analysis tend “to support the conclusion that parental actions are

Where will the new trend of parental responsibility laws take us? Is the answer more enforcement? In other words, is the answer pursuing more punishment? Analysis of California's parental responsibility statute may help to answer some of these questions.

C. California's Penal Code Section 272

California's Penal Code section 272 has served as a model for many recent parental responsibility statutes. While the statute originally penalized only the offense of contributing to the delinquency of a minor, the legislature added an amendment including a parental responsibility provision in 1988.⁹⁸ It reads: "For purposes of this section, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise *reasonable care, supervision, protection, and control* over their [sic] minor child."⁹⁹ Section 272 was amended at the request of Los Angeles prosecutorial agencies to target parents for "the express purpose of deterring juvenile delinquency, particularly juvenile gang activity, by affecting parental actions perceived to cause such delinquency."¹⁰⁰ The criminal parental responsibility provision imposes a fine, not to exceed \$2500, imprisonment of no more than one year, or both for parental violations.¹⁰¹

but a single factor in the interaction of forces producing juvenile misconduct." *Doe*, 362 A.2d at 1203. The court concluded that it could not state with substantial assurance that a minor's second public peace adjudication was "more likely than not" the result of active or passive wrongdoing by the parents in the case. *Id.*

98. See CAL. PENAL CODE § 272 (West 1999). The original California CDM statute was not used to correct *parental* inadequacies, and thereby reduce juvenile crime, but was instead only applied to punish adults in general for their misconduct. Section 272 was thus clearly targeted at parents. See Raymond F. Vincent, *Expanding the Neglected Role of the Parent in the Juvenile Court*, 4 PEPP. L. REV. 523, 531 (1977).

99. CAL. PENAL CODE § 272 (emphasis added).

100. Chapin, *supra* note 36, at 655. The amendment was enacted as part of the Street Terrorism Enforcement and Prevention Act, 1988 Cal. Stat. 1242, 1256 (codified as amended at CAL. PENAL CODE § 186.20-.28 (West 1999)), on the premise that California was in a state of crisis caused by violent street gangs, and that parents needed to be enlisted as active participants in the effort to eradicate such gangs. See Sharon A. Ligorsky, Note, *Williams v. Garcetti: Constitutional Defects in California's "Gang-Parent" Liability Statute*, 28 LOY. L.A. L. REV. 447, 448-49 (1994).

101. See CAL. PENAL CODE § 272.

Unlike most parental liability statutes or ordinances, section 272's constitutionality was thrust into the spotlight in *Williams v. Garcetti*¹⁰² shortly after its enactment. The California Supreme Court upheld the amended statute in its entirety, finding that it was neither unconstitutionally vague nor overbroad.¹⁰³ The court also held that section 272 did not interfere with parents' constitutional rights to raise and educate their children or to enjoy privacy in their family lives.¹⁰⁴ According to the court, parents were provided sufficient notice of potential liability for failure to supervise and control their children.¹⁰⁵ Additionally, the court found that the parental duty was sufficiently certain, despite the fact that neither the amendment nor prior case law set forth specific acts that a parent would have to perform, or avoid, to fulfill their duties of supervision and control.¹⁰⁶ The court reasoned that a statutory definition of "perfect parenting" would be "inflexible and not necessary to identify the egregious breaches of parental duty that come within the statute's purview."¹⁰⁷ Instead, the court saw the concept of "reasonableness" as a guide for parents. Therefore, according to the court, criminal liability would be imposed under the statute only when a parent engaged in conduct that so grossly departed from this "reasonableness" standard of care as to amount to criminal negligence.¹⁰⁸ The court noted that the

102. 5 Cal. 4th 561, 853 P.2d 507, 20 Cal. Rptr. 2d 341 (1993). California's state supreme court is, in fact, the only court to actually analyze the constitutionality of a parental criminal liability statute.

103. *See id.* at 577-79, 853 P.2d at 516-17, 20 Cal. Rptr. 2d at 350-51.

104. *See id.* at 578, 853 P.2d at 516-17, 20 Cal. Rptr. 2d at 350-51.

105. The court stated that because section 272 "incorporates the definition and the limits of a parental duty to supervise and control children that has long been a part of California [dependency law and] tort law," parents had adequate notice. *Id.* at 575, 853 P.2d at 514, 20 Cal. Rptr. 2d at 348.

106. *See id.* at 572, 853 P.2d at 512, 20 Cal. Rptr. 2d at 346. The court agreed with defendant's argument that the statute, in fact, had to lack specificity since "it would be impossible to provide a comprehensive statutory definition of reasonable supervision and control." *Id.* at 573, 853 P.2d at 513, 20 Cal. Rptr. 2d at 347.

107. *Id.*

108. *See id.* at 573-74, 853 P.2d at 513, 20 Cal. Rptr. 2d at 347. The court defined criminal negligence as "'aggravated, culpable, gross, or reckless, that is, . . . such a departure from what would be the conduct of an ordinarily prudent or careful [person] under the same circumstances.'" *Id.* at 574, 853 P.2d at 513, 20 Cal. Rptr. 2d at 347 (quoting *People v. Penny*, 44 Cal.2d 861, 879, 285 P.2d 926, 937 (1955)).

heightened requirements of criminal negligence insist on actual or constructive knowledge by the parents of a risk of delinquent acts by their child.¹⁰⁹

Despite the seemingly broad terminology constituting a violation under section 272, the court clearly narrowed the reach of the statute by distinctly defining the parents that it would affect, as noted above.¹¹⁰ The court even further narrowed the statute's influence by pointing out that even if section 272 did apply to a particular parent, there were alternatives to imposing the statutory penalties.¹¹¹ As a part of the bill including this amendment, the probation department could recommend diversion of parents to parenting classes under specific circumstances.¹¹² If parents completed a program prior to trial, all criminal charges would be dismissed.¹¹³ The court, therefore, recognized that this opportunity for parental diversion from criminal prosecution in less egregious cases "suggests that as a practical matter a parent will face criminal penalties . . . only in those cases in which the parent's culpability is *great* and the *causal connection correspondingly clear*."¹¹⁴

As a result of this alternative of diversion and its reinforcement by the *Williams* court, and despite the apparent desire in section 272 to hold parents criminally liable, deficient parenting that falls within the statute is hardly ever enforced with criminal sanctions. While the threat behind section 272 is criminal prosecution, enforcement is

109. *See id.* at 574, 853 P.2d at 513-14, 20 Cal. Rptr. 2d at 347-48. Thus, the court made clear that section 272 punishes only parents who know or reasonably should know that their child is at risk of delinquency. Also, it appears that parents who take reasonable steps to control their child and are not successful will not be charged under section 272. *See id.*, 853 P.2d at 514, 20 Cal. Rptr. 2d at 348.

110. *See id.*

111. *See id.* at 566, 853 P.2d at 508, 20 Cal. Rptr. 2d at 342.

112. *See id.*

113. The first use of section 272 involved the arrest of Gloria Williams, the mother of a fifteen-year-old rape suspect. Police found gang insignia, including bedroom walls covered in graffiti and photograph albums showing members of the family pointing guns. When it was learned that Williams had attended parenting classes before she was arrested, the charges against her for violation of section 272 were dropped. *See Weinstein, supra* note 63, at 859-60.

114. *Williams*, 5 Cal. 4th at 576, 853 P.2d at 515, 20 Cal. Rptr. 2d at 349 (emphasis added).

generally obtained through parenting classes and counseling.¹¹⁵ Section 272 thus distinctly illustrates the “tension between society’s desire to blame parents for the juvenile delinquency of their children, and society’s reluctance to actually punish them” with criminal sanctions.¹¹⁶

Despite the lack of criminal enforcement of section 272, California’s actions do illustrate a willingness to point the finger at parents for delinquency problems of their children. The state instead requires the affirmative action of parental training, as opposed to punishment, in appropriate circumstances to remedy the problem.¹¹⁷ The use of section 272’s diversion program in fact confirms “a new rationale for parental liability statutes [that] is being tested in California: if lack of adequate parental control and supervision is a primary cause of juvenile delinquency . . . , then perhaps parent training, not parent punishment, will provide the much desired deterrent effect.”¹¹⁸

IV. THE EXTREME CASES: COLUMBINE HIGH SCHOOL AND SIMILAR SCHOOL SHOOTINGS

Controversy over the goals and anticipated effects of parental responsibility laws would seem to explain the reported fear of tapping into the potential uses of these statutes. Clearly, existing parental responsibility laws have been used primarily, if at all, for prevention rather than punishment. Where there have been prosecutions, parents generally have been ordered to pay a small fine or attend parenting classes, as illustrated by enforcement of

115. A 1995 report indicated that in 1994, the Los Angeles City Attorney’s Gang Unit sent “one thousand parents to counseling or classes (presumably under the threat of possible prosecution); only two parents who refused to cooperate with the Unit were actually prosecuted” under section 272. See Davidson, *supra* note 52, at 27.

116. Chapin, *supra* note 36, at 625.

117. See *id.* at 660.

118. *Id.*

California Penal Code section 272.¹¹⁹ Cases where considerable criminal sanctions have been applied are virtually unheard of to date.

This lack of enforcement is illustrated by the vast publicity resulting from one of the few prosecutions under a parental responsibility ordinance in 1996 in St. Clair Shores, Michigan.¹²⁰ The ordinance required parents to exercise "reasonable control" in preventing their children from committing delinquent acts.¹²¹ Robert Ihrle, author of the ordinance, defended its purpose and reach: "Parents are held responsible for their own conduct under our ordinance. . . . If parents exercise even the most minimal parental supervision, it is unlikely [that] they would ever be charged with an ordinance violation."¹²² A jury deliberated for less than fifteen minutes before convicting Anthony and Susan Provenzino under this ordinance for failing to control their child.¹²³ The couple's son had committed seven burglaries, and the couple was on notice of the town ordinance.¹²⁴ Jurors later said that their decision to convict was based

119. Other states also now provide affirmative opportunities, such as parenting classes, reporting the child's crime, and community service to preclude criminal punishment. See Scarola, *supra* note 2, at 1044; see also OR. REV. STAT. § 163.577(7)(a) (Supp. 1998) (emphasis added):

If a person pleads guilty or is found guilty of failing to supervise a child . . . and if the person has only one prior conviction for failing to supervise a child, the court . . . may suspend imposition of sentence and order the person to complete a *parent effectiveness program* approved by the court.

120. For a complete discussion of the facts of the case, see Barry Siegel, *Town Tries to Police the Parents*, L.A. TIMES, Apr. 21, 1996, at A1 [hereinafter Siegel I].

121. ST. CLAIR SHORES, MICH., PARENTAL RESPONSIBILITY ORDINANCE 20.561-20.566 (1994) (requiring parents "to exercise reasonable control to prevent the minor from committing any delinquent act"); see also Barry Siegel, *2 Held Accountable for Son's Burglaries*, L.A. TIMES, May 10, 1996, at A1 [hereinafter Siegel II] (discussing application of the ordinance).

122. Zolman, *supra* note 34, at 236 (quoting *Are Parents Responsible for Their Children's Crimes?*, Online NewsHour: Parental Responsibility Forum, (May 21, 1996) <http://www/pbs.org/newshour/forum/may96/parents_5-21.html>).

123. See Siegel I, *supra* note 120, at A1.

124. See *id.* The parents were first confronted by the police in May 1995, after their son had committed three break-ins; they were warned at that time about the town's liability ordinance. Detectives later found marijuana plants, a stolen .25-caliber gun on the night stand, and several other stolen items in plain view in the boy's bedroom. See *id.*

largely on the Provenzinis' failure either to get their son into counseling or to take action after the warnings.¹²⁵ They were fined \$100 each, assessed \$1000 in court fees, and ordered to pay their son's detention costs, totaling \$13,000 a year for care in a youth home.¹²⁶ Reaction to the highly publicized plight of the Provenzinis was mixed. National sentiments reflected both feelings of unfairness and feelings of justice.¹²⁷ However, according to local reports, "it [was] hard to find anyone in St. Clair Shores inclined to defend the Provenzinis."¹²⁸ Many felt that this was "the right case to use as a test . . . [and] the right time" to do so.¹²⁹

Reaction to the recent onslaught of violent school shootings, primarily the Columbine High School shooting, seems to parallel the reaction to St. Clair Shores. We have seen an increased societal "quest to blame someone or something for these inexplicable rampages [that] does not stop with the youthful perpetrators."¹³⁰ People are pointing fingers at parents, and the debate over the appropriateness of parental liability is on the tips of everybody's tongues. According to the National Conference of State Legislatures' spokesman, Gene Ross, the Columbine incident "definitely heightened awareness" of parental liability laws; he anticipates that as a result "many such measures likely will be introduced in state legislatures" in the next year.¹³¹ Therefore, while parental responsibility

125. See Scarola, *supra* note 2, at 1030.

126. See *id.* However, the parents appealed the fines, which were overturned for the prosecution's failure to show that the Provenzinis did not, in fact, attempt to bring their son to counseling. See *id.* at 1030 & n.19 (citing *City of St. Clair Shores v. Provenzino*, No. 96-1483 AR, at 15 (County of Macomb, Mich., Cir. Ct., July 16, 1997)). The court also struck down a section of the ordinance that created parental liability based solely on the child's delinquent status. See *id.*

127. People across the country reacted to the case over the Internet. Some parents felt that the Provenzinis were rightfully punished for their lack of control over their son and that this ordinance was properly applied as an attack on juvenile crime. Opponents felt sympathy for the Provenzinis' inability to control their son. They felt that the ordinance invaded the privacy of parenting. See Scarola, *supra* note 2, at 1031-32.

128. Siegel I, *supra* note 120, at A1.

129. *Id.*

130. DelCour, *supra* note 1.

131. Price, *supra* note 10, at C7.

prosecution remains fairly dormant to date, the Columbine incident is proving itself to be the extreme case that may change things.

Shortly after the shootings at Columbine High School on April 20, 1999, news reporters, law professors, legislators, and President Clinton were all talking about whether the parents of shooters, Eric Harris and Dylan Klebold, were to blame. The public heard over and over the lists of evidence that arguably would have put reasonable parents on notice for risks of criminal action by their child.¹³² Attorney General Janet Reno and Governor Bill Owens of Colorado reacted by suggesting shortly after the massacre that if the parents had any hint of the plan and failed to act, the parents might be criminally liable for such an omission.¹³³

Legal experts reacted by debating whether this was in fact a legal problem or a moral matter. According to Marin Belsky, dean of the University of Tulsa College of Law, "You can't resolve everything by law, . . . and that's spoken by the dean of a law school."¹³⁴ On the other side, according to Los Angeles trial attorney, Gloria Allred, "The reason [this needs to be a legal issue] is because many parents are not controlling their children, and this is really sending a message to parents, 'Look, you have them under your care . . . and you need to exercise that control.'"¹³⁵ Colorado officials responded by announcing that they were denying immunity to the parents of Eric Harris, leaving open the possibility of future prosecution.¹³⁶ The Schoel family, whose son was killed at Columbine, filed a \$250 million wrongful death lawsuit on May 28, 1999, against the Harris and Klebold parents.¹³⁷ Finally, the Columbine incident triggered

132. Police found a sawed-off shotgun, bomb-making materials, and hate literature in full view in Eric's and Dylan's bedrooms; neighbors heard sounds of them shattering glass to make pipe bombs in the garage; a journal was found showing that the shootings had been planned for a year. *See CNN Crossfire*, *supra* note 7; *see also* DelCour, *supra* note 1 ("[W]e ask, how could you be so clueless? How could parents have not asked, 'Hey, I hear you out in the garage cutting up pipe with a hacksaw. What's that all about?'").

133. *See* William Glaberson, *Parental Culpability Dubious*, NEWS & OBSERVER, Apr. 27, 1999, at A4.

134. DelCour, *supra* note 1.

135. *CNN Crossfire*, *supra* note 7.

136. *See* Price, *supra* note 10, at C7.

137. *See* Dave Cullen, *Let the Litigation Begin* (last modified May 28, 1999) <<http://www.salon.com/news/feature/1999/05/28/families/index.html>>. The

reaction at the national level—only three weeks later, President Clinton sent Congress a bill mandating prison sentences of three to ten years with a \$10,000 fine for adults, including parents, who “knowingly or recklessly” allow children access to guns.¹³⁸ While there is mixed reaction, as with any parental liability law, some people who ordinarily oppose criminal sanctions on parents seem to be crossing the line, seeing merit in this bill as a response to incidents like Columbine.¹³⁹

V. THE YOUTH GUN CRIME ENFORCEMENT ACT OF 1999:

AN APPROPRIATE AND NECESSARY RESPONSE FOR EXTREME CASES?

There has been a large increase recently in laws holding parents criminally responsible for leaving unsecured firearms or ammunition in the home, where children can gain easy access to them.¹⁴⁰ Usually, these laws require that the parent either: (1) knowingly or recklessly provide a minor child with access to a gun, or (2) know that the child has the gun, regardless of the source, but fail to act on it.¹⁴¹ Unlike the broad parental responsibility statutes discussed in Part III.B, which are almost always punishable as misdemeanors, handgun statutes are often classified as felonies.¹⁴²

lawsuit accuses the parents of being negligent in their duties and responsibilities of parental supervision and contends that “by omission and inaction they facilitated the actions of their sons.” *Columbine Victim’s Kin File Lawsuit*, OMAHA WORLD-HERALD, May 28, 1999, at 11.

138. See Price, *supra* note 10, at C7.

139. Mark Soler, president of the Youth Law Center in Washington, D.C., for example, stated that while he had “real concerns about . . . imposing impossible standards on parents,” he saw merit in the proposal to make parents criminally liable for knowingly or recklessly giving their children access to guns. *Id.*

140. In 1990, Florida was among the first states to make such parental conduct a serious offense, instituting a five-year prison sentence and a \$5000 fine against parents whose children use guns that have been left unsecured. See FLA. STAT. ANN. § 784.05(3) (West Supp. 2000); Dimitris, *supra* note 35, at 669. Other states have recently followed Florida’s lead. See, e.g., NEB. REV. STAT. ANN. § 28-1204.01 (Michie 1999); N.J. STAT. ANN. § 2C:58-15 (West 1999); N.Y. PENAL LAW § 265.16 (McKinney 2000).

141. See Schmidt, *supra* note 71, at 680-81.

142. See FLA. STAT. ANN. § 784.05(3) (making the crime a felony of the third degree); NEB. REV. STAT. ANN. § 28-1204.01 (making the crime a Class IV felony).

President Clinton's gun-control proposal appears in Senate Bill 995 and House Bill 1768.¹⁴³ The national legislation mirrors many of these state actions by holding parents criminally liable whenever they "knowingly or recklessly" give a child access to a firearm.¹⁴⁴ If the child then uses the gun to cause death or serious bodily injury to himself or others, the parent "shall be imprisoned not more than 3 years, fined . . . , or both."¹⁴⁵ It is important to note that the section of the bill discussed in this Comment is certainly not the most debated, and therefore is not necessarily what is preventing passage of this bill and revised similar bills. The bill also proposes to impose new background check restrictions on weapons sales by dealers at gun shows, outlaw the import of ammunition clips, and require child safety locks on all new handguns.¹⁴⁶

One author suggested of the many state firearm statutes being passed that there would be little criticism of such laws punishing parents, given the risks inherent in providing children access to guns.¹⁴⁷ The federal and state statutes also require high mens rea, generally "knowledge" or "recklessness," for parents to come within the purview of the law, thereby reducing the risk that faultless parents will be punished—an argument made by most opponents of lower mens rea statutes.¹⁴⁸ However, broad support has not followed. While the voices of supporters have clearly been heard,¹⁴⁹ so have some voices of those frustrated with the legal approach to this problem.¹⁵⁰ People at both ends of the gun-control debate feel that

143. Youth Gun Crime Enforcement Act of 1999, S. 995, 106th Cong. § 204; Youth Gun Crime Enforcement Act of 1999, H.R. 1768, 106th Cong. § 204. See Appendix for full text of the bill.

144. *See id.* The adult would have to: (1) keep a firearm within his or her control; (2) know or recklessly disregard the risk that the child can access the gun; (3) know or recklessly disregard the risk that the child will use the firearm to cause injury. *See id.*

145. *Id.*

146. *See id.*

147. *See* Dimitris, *supra* note 35, at 669.

148. *See* CNN *Crossfire*, *supra* note 7.

149. *See id.* ("If . . . a parent knows that his or her child has a gun and/or a bomb, and fails to report it to authorities, or fails to take that gun away, then I think maybe they should be treated as a criminal, because they're presenting a risk of harm to other children.") (quoting trial attorney, Gloria Allred).

150. *See id.* ("The real world is that these tragic inexplicable cases of children killing children are not legal problems.") (quoting Nadine Strossen, Presi-

this is just another gun-control provision that would not have made a difference. One representative opponent of such a national bill in general argues: "The whole gun control debate is on the fringe of the problem. You can't pretend by plugging loopholes here and there that you're going to have an effect on the crux of American gun violence."¹⁵¹ Another opponent reiterates the problem of lack of enforcement of these laws: "Not only would the provisions being discussed do nothing to prevent those shootings, neither do the thousands of gun laws on the books today."¹⁵²

So what is the solution? Is the parental responsibility provision in the Youth Gun Crime Enforcement Act of 1999 just symbolic lawmaking for the sake of a statement, or will it be enacted as an attempt to reduce crime rates? Is this law only a political response to recent high-profile juvenile crimes? While the national bill and state laws at hand may not have prevented past school shootings, they are clearly a response. Proper parental liability legislation plus enforcement techniques may provide a better chance for these new laws to chip away at the juvenile crime/parenting problem with which this nation is faced.

VI. AN ANALYSIS OF THE FUTURE OF PARENTAL RESPONSIBILITY LEGISLATION VERSUS WHAT IT SHOULD BE

It is important to note that when President Clinton proposed the juvenile crime bill, he also recommended a national campaign to mobilize all things affecting juvenile crime, not just parents. According to the president, the proper solution is one that "doesn't pretend that guns are the issue, that culture is the whole issue, that parents are the whole issue, that school safety is the whole issue, but deals with all of this together."¹⁵³ As mentioned earlier, inadequate parenting is clearly not the only cause of juvenile delinquency. Therefore, any solution to the problem of parenting cannot operate in a vacuum. Parental responsibility laws must be accompanied by

dent of the American Civil Liberties Union).

151. David B. Ottaway & Barbara Vobejda, *Gun Control's Limited Aim*, WASH. POST, Sept. 19, 1999, at A01 (quoting Kristen Rand, director of federal policy at the Violence Policy Center, a gun control advocacy group).

152. *Id.* (quoting John Velleco, spokesman for Gun Owners of America).

153. Interview with Katie Couric of the National Broadcasting Corporation, 35 WEEKLY COMP. PRES. DOC. 763, 765 (May 3, 1999).

much farther-reaching programs to influence the many causes of delinquent behavior.¹⁵⁴ However, parental responsibility legislation can and should be a *part* of the solution.

A. What is the Future of Parental Responsibility Laws?

The newer and tougher laws, imposing greater parental civil and criminal liability, are only in the first stages of enactment and enforcement.¹⁵⁵ While it is still too soon to evaluate any long-term effectiveness, some results from parental responsibility enforcement are apparent.¹⁵⁶ For example, many states have adopted their parental liability statutes to follow the lead of localities with such legislation.¹⁵⁷ Oregon passed a law in 1995 because of the purported success of a similar ordinance passed by the small town of Silverton, Oregon.¹⁵⁸ Authorities in Silverton reported that crime dropped forty percent after their parental liability law was enacted.¹⁵⁹ Also, there were clear results from the St. Clair Shores ordinance discussed in Part IV. According to a report made shortly after the prosecution of the Provenzinos: “[I]t appears St. Clair Shores parents are already thinking twice about how they deal with their children. Just last week, two parents filed police reports on their sons, one for

154. See Ligorsky, *supra* note 100, at 466 & n.147 (stating that the many causes include “social class, educational level, urbanization, living conditions, and social instability,” as well as parenting).

155. See *supra* notes 29, 140 and accompanying text.

156. See Scarola, *supra* note 2, at 1045.

157. See Price, *supra* note 10, at C7.

158. See *id.*

159. See *id.* It must be noted, however, that there is no evidence to indicate causation, as opposed to mere correlation, from these statistics. There may have been other factors, beyond enactment of the statute, that caused the drop in crime. For example, the national decline in juvenile crime is attributed to “a combination of factors . . . , including a booming economy that provides more jobs for youths, tougher gun control measures such as trigger lock mandates, and increased attention to juvenile delinquency.” Lichtblau, *supra* note 21, at A1. See also Linda S. Beres & Thomas D. Griffith, *Did “Three Strikes” Cause the Recent Drop in California Crime?: An Analysis of the California Attorney General’s Report*, 32 LOY. L.A. L. REV. 101, 110 (1998) (“Many factors influence the crime rate, making it difficult to isolate the impact of any one.”). This article further analyzes the problem of attributing causation, rather than mere correlation, in the context of the claim that California’s “Three Strikes” legislation caused the recent decline in crime.

possessing cigarettes, another for climbing out his bedroom window at 11 p.m.”¹⁶⁰

On the other hand, in California, since the enactment of section 272 and its diversion program, in spite of enrollment in parenting classes, as of 1995 there had been no corresponding decrease in juvenile crime.¹⁶¹ Despite both positive and negative reaction from parental responsibility legislation, the “true worth and potential [of such laws] cannot be realized until juvenile courts [and prosecutors] take the initiative” and begin to administer them more frequently.¹⁶² Only then can a more universal application of these laws be studied, rather than in the above isolated cases.

B. Recommendations for Existing and Future Laws

While universal application of existing laws will be helpful in providing more data to analyze, this is not the sole answer. *Reforming* and *refocusing* existing legislation would also aid in achieving the ultimate goal of parental responsibility—decreased juvenile delinquency through stronger family structure—by alleviating some of the problems brought about by the present laws. The following recommendations are certainly not radical, and in fact are clearly supported by many commentators.

1. The goal

First and foremost, the goal of parental responsibility laws should be to *balance* prevention with prosecution.¹⁶³ This means that laws, in appropriate cases, need to be enforced through punishment, rather than just serving as threats or symbolic legislation. “[T]he legal system needs tools to enforce parental responsibility for children’s serious public misbehavior.”¹⁶⁴

Where the requisite intent or causation is not clearly established, parenting classes or other social programs may be appropriate.

160. Siegel I, *supra* note 120, at A1.

161. See Scarola, *supra* note 2, at 1045.

162. Zolman, *supra* note 34, at 234.

163. See NCSL II, *supra* note 13. This is the present OJJDP comprehensive strategy that states are following in the adoption of programs for juveniles.

164. Greenwood, *supra* note 33, at 433 (suggesting that parental responsibility laws should be enforced through proper use and publicized to complement social agency activities providing services to parents).

Parents can also be made aware of and educated about these laws early on, before their child actually engages in the conduct.¹⁶⁵ However, for more serious violations—where higher mens rea and causation are met, equating to more egregious bad parenting—more serious action should be taken. Arguably by applying either prevention or punishment, each in the appropriate circumstances, deterrence and thus a decrease in the juvenile crime rate will more likely result.¹⁶⁶

2. Social programs

Legislation for “parental offenders” should mimic that for juvenile offenders. For example, recent legislation for juveniles operates on the same sliding-scale theory recommended here.¹⁶⁷ For first-time or less serious juvenile offenders, laws provide for community sanctions, aimed at risk reduction and skill development.¹⁶⁸ On the other hand, for more serious or repeat offenders, more punitive and restrictive sanctions are imposed, including secure confinement for the most violent juveniles.¹⁶⁹ Similarly, for parental offenders, legislation should offer social programs for the less serious offenders or first-time offenders, but impose criminal sanctions on the more serious offenders.

Criminal sanctions can become more effective by developing and implementing social programs to help parents foster more adequate parenting skills.¹⁷⁰ According to one commentator, who expresses the opinion of many, “such legal accountability is realistic and fair only when appropriate, affordable, and abundant family-supportive and rehabilitative resources are available to families.”¹⁷¹

165. See Dimitris, *supra* note 35, at 673.

166. See *id.* at 696-98.

167. See NCSL II, *supra* note 13.

168. See *id.*; see also CONN. GEN. STAT. ANN. § 46b-120 (West 1996) (balancing prevention with prosecution of serious juvenile offenders); TEX. FAM. CODE ANN. § 51.01 (West 1998) (toughening sentencing for some juvenile offenders while establishing first-offender programs and seven-step progressive sanctions for others).

169. See 1999 NATIONAL REPORT, *supra* note 12, at 108.

170. See Dimitris, *supra* note 35, at 682.

171. Davidson, *supra* note 52, at 28; see also Dimitris, *supra* note 35, at 673 (“Parental responsibility statutes are merely one weapon in the arsenal to attack juvenile crime, but parental responsibility statutes will fail without supportive social systems.”).

“Get tough laws” toward parents will not work to curb juvenile delinquency and violence in a vacuum.¹⁷²

The California diversion program, offering parenting classes, is one such example of a support program that can work in conjunction with criminal sanctions. California has adopted the rationale that some parents are not choosing to be bad parents, but simply are not properly trained to be good parents.¹⁷³ A 1988 article suggests that parenting classes may be effective in the long run in reducing juvenile delinquency by beginning with education.¹⁷⁴ Studies of programs designed for the delinquent juveniles, rather than the parents, seem to support this suggestion. For example, an examination of more than four hundred juvenile programs showed that the most successful ones provided behavior training or modification, focusing on improving interpersonal relation skills, self-control, and school achievement.¹⁷⁵ Accordingly, since parenting classes would provide adults with behavioral training and modification skills for dealing with their children, the same result might occur with parents.

Another approach is to institute mandatory programs to get parents more involved in the punishments and delinquency proceedings of their child. Parents could be required to accompany their children to court, participate in their children’s treatment programs, and pay for their children’s criminal acts.¹⁷⁶ In conclusion, this method of balanced justice for the parent and child would bring about consequences and treatment for both parties, as well as increased parental responsibility for the upbringing of children.

3. Tailored laws

Parental responsibility laws should also clearly enumerate the conduct at which they are aimed. Only by clearly defining violations of the statute can the law properly guide and deter parents.¹⁷⁷ Such

172. See Dimitris, *supra* note 35, at 673.

173. See Chapin, *supra* note 36, at 663.

174. See *id.* at 671.

175. See NCSL II, *supra* note 13 (noting that these seemed to also be the most intensive in terms of the amount and duration of concentrated attention to youths).

176. See the proposed statutes in *supra* note 29 for examples of states that plan to institute such programs.

177. See Greenwood, *supra* note 33, at 425.

laws will also avoid challenges on constitutional grounds for vagueness, overbreadth, and due process infringements.¹⁷⁸

The parental responsibility provision in the Youth Gun Crime Enforcement Act of 1999 is an example of the way parental liability laws should be tailored.¹⁷⁹ The provision distinctly defines the type of action or nonaction encompassed in the law—if a parent “knowingly or recklessly” allows a child access to a firearm, and the child uses that firearm to injure someone, the parent falls within the statute.¹⁸⁰ The provision also spells out affirmative defenses to the law that might arise, eliminating the criminal sanctions that a court would normally impose.¹⁸¹ The provision is very clear as to its reach,¹⁸² thereby avoiding overbreadth issues, and as to the sanctions courts can impose,¹⁸³ thereby avoiding too much sentencing discretion in the hands of judges.

4. Punishment as a last resort

Finally, prosecution and criminal sanctions should be a last resort. State and national legislation should not impose punishment where alternative recommendations provide adequate solutions. According to one commentator, “It is simply inappropriate to rush into legislative solutions that punish parents . . . without ensuring that effective services are readily available to families at all income levels, and in all parts of a state, to help them be better parents.”¹⁸⁴

178. See *supra* Part III.B and accompanying text.

179. See Youth Gun Crime Enforcement Act of 1999, S. 995, 106th Cong. § 204; Youth Gun Crime Enforcement Act of 1999, H.R. 1768, 106th Cong. § 204. See Appendix for full text of the bill.

180. See *id.*

181. See *id.* The exceptions include: (1) if the child obtained access while the firearm was secured; (2) if the parent or adult is a peace officer, or member of the Armed Forces, and the child obtains the gun during or incident to performance of official duties; (3) if the child uses the gun in self-defense; (4) if the parent or adult has no reasonable expectation that a child will be on the premises. See *id.*

182. See *id.* (stating that a “child” is any individual who has not yet attained the age of 18, and the bill applies to adults).

183. See *id.* (stating that the person shall be imprisoned for not more than three years, fined, or both).

184. Davidson, *supra* note 52, at 28.

Only parents who have not taken advantage of the resources offered to them or parents who are serious offenders should be subject to prosecution and hence criminal penalties.¹⁸⁵ Again, for parents who clearly fall within the purview of the law—meaning they equate to serious offenders because of the high mens rea and causation requirements—or for parents who refuse to change, it is fair and possibly necessary to impose liability. “[A] parent has a duty and opportunity to control, supervise, and train his/her child in the way of responsible behavior.”¹⁸⁶ If the parent and child fall short of this, both should be punished accordingly.

While there is a trend toward tougher parental liability laws, we see a similar trend toward tougher juvenile justice laws.¹⁸⁷ For example, within the past decade, many states have adopted mandatory sentencing schemes or developed strict sentencing guidelines for juvenile offenders.¹⁸⁸ In fact, ninety percent of laws concerning juveniles have been revised since 1990 to amend the purpose clauses or mission statements in their juvenile codes, “in response to the belief that serious and violent juvenile offenders must be held more accountable for their actions.”¹⁸⁹ Whereas many clauses previously focused on juveniles’ emotional well-being and care, thirty-two of the fifty states now have clauses focusing on a mixture of punishment and prevention.¹⁹⁰ Tougher actions against parental offenders should

185. See Dimitris, *supra* note 35, at 698.

186. *Curry v. Superior Court*, 20 Cal. App. 4th 180, 189, 24 Cal. Rptr. 2d 495, 500-01 (1993).

187. See NCSL I, *supra* note 6.

188. See Gramckow & Tompkins, *supra* note 15, at 2 (stating that one-third of all juvenile court sentencing schemes now include mandatory sentencing).

189. *Id.*

190. See *id.* (noting that nine states now focus exclusively on punishment). This, of course, assumes that the recent trend in juvenile justice reform will prove to be effective. There are some preliminary studies to the contrary, suggesting higher recidivism rates and a greater number of juveniles being tried as adults. For example, in Florida, discretion has been placed in the prosecutors’ hands, instead of judges’, to try juveniles as adults. As a result, in 1995, Florida prosecutors sent nearly as many juveniles to adult court as did the entire nation’s judges. See Gary Fields, *Report Critical of Prosecutors’ Power Over Youths*, USA TODAY, Sept. 30, 1999, at 3A. A study of Florida’s juvenile reforms from 1981 through 1998 found that youths tried as adults then committed new crimes twice as fast after their release as those handled in the juvenile system. See *id.* It is questionable, however, whether Florida was advancing

continue to parallel this change with youth offenders in order to truly obtain a successful restorative, or balanced, juvenile justice program, with attention to holding both juveniles and their parents accountable for criminal acts.¹⁹¹

VII. CONCLUSION

According to one commentator, "We have an adult problem, not a children problem If we can get our adults together, the children will naturally fall in line."¹⁹² While it seems appropriate to look to parental action or inaction as a cause of juvenile delinquency, it is inappropriate to focus on it as the only cause. We will likely see a flux of parental responsibility statutes introduced in state legislatures this year, and we have yet to see whether some form of the Youth Gun Crime Enforcement Act of 1999 will be enacted by the federal government. These statutes, if and when adopted, should not operate alone if we want to see true results on the problem of juvenile delinquency. "[W]e must continue to pursue a multiplicity of solutions to this complex social problem; parental liability laws should be acknowledged as only a partial solution"¹⁹³

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balanced prevention/punishment reform as proposed in this Comment.

191. See NCSLI, *supra* note 6.

192. Zolman, *supra* note 34, at 229 (quoting Nia Keeling, family outreach worker).

193. Chapin, *supra* note 36, at 626.

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APPENDIX

The Youth Gun Crime Enforcement Act of 1999, S. 995, 106th Cong. § 204 (emphasis added).

The Senate version of the bill reads:

Sec. 204. Responsibility of Adults for Death and Injury Caused by Child Access to Firearms.

Sec. 922 of title 18, United States Code, is amended by adding at the end the following:

“(aa) Prohibition Against Giving Children Access to Firearms. -

- (1) Definition of Child. - In this subsection, the term “child” means an individual who has not attained the age of 18 years.
- (2) Penalties. - Except as provided in paragraph (3), any person who -
 - (A) keeps a loaded firearm, or an unloaded firearm, and ammunition for the firearm, any one of which has been shipped or transported in interstate or foreign commerce, within any premises that is under the custody or control of that person; and
 - (B) *knows or recklessly disregards the risk, that a child is capable of gaining access to the firearm;* and
 - (C) (i) *knows, or recklessly disregards the risk, that a child will use the firearm to cause death or serious bodily injury . . . to the child or any other person;* or
(ii) possession of the firearm by the child is unlawful under Federal or State law; and
 - (D) the child uses the firearm to cause death or serious bodily injury to the child or any other person, shall be imprisoned not more than 3 years, fined under this title, or both.
- (3) Exceptions. - Paragraph (2) does not apply, if -
 - (A) at the time the child obtained access, the firearm was secured with a secure gun storage or safety

device;

- (B) the person is a peace officer, a member of the Armed Forces, or a member of the National Guard, and the child obtains the firearm during, or incidental to, the performance of the official duties of the person in that capacity;
- (C) the child uses the firearm in a lawful act of self-defense or defense of 1 or more other persons; or
- (D) the person has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises on which the firearm is kept.”